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| 02. | 14.9.06 | In terms of our Order dated August 31, 2006 we proceed to dispose of this Writ Petition.<br><br>**[2]** The Petitioner has come up with a prayer for issuing a writ in nature of mandamus or any appropriate writ or direction to the Respondents to allow her to attend counselling and get her admitted in the MBBS Programme, 2006.<br><br>**[3]** Her case is as follows: -<br><br>**[3.1]** The Petitioner was born on 3.5.1987.<br><br>**[3.2]** She resides in a remote area of District Imphal where there is no Internet facility.<br><br>**[3.3]** Pursuant to a notification made for selection of M.B.B.S. Course in the Sikkim Manipal Institute of Medical Sciences (hereinafter referred to SMIMS) she applied for the Combined Entrance Test Examination complying with the formalities along with her Telephone Number for future communication.<br><br>**[3.4]** Through a call letter dated August 14, 2006, which was dispatched through Speed Post on August 18, 2006 (its copy appended as Annexure A/3 and the Speed Post Envelope appended as | |

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Annexure A/4), was received by her on August 25, 2006. According to the Call Letter she was asked to appear in person on August 23, 2006 by 10.00 AM and not later than 12.00 Noon of that day at SMIMS Campus, Gangtok for counselling and admission under North-East Category.

**[3.5]** Her father contacted Respondent No. 3 but was informed that all the seats of M.B.B.S. programme have been filled up, who also made a representation dated August 26, 2006 through Post to Respondent No. 3 (as contained in Annexure A/5), but without any positive response.

**[3.6]** The Speed Post Envelope containing the Call Letter took 8 days to reach her. Naturally, therefore, she could not attend her counseling for which she can not be faulted. This has put her academic career in serious jeopardy.

**[4]** It is also learnt that some additional seats for MBBS course are going to be allotted at SMIMS.

**[5]** In their Counter Affidavit, which has been sworn by the Registrar of the University, it has been stated inter alia, to this effect: -

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The Petitioner could not qualify for the first counselling which was held on August 11, 2006, but there being possibility of her being admitted she was called for the second counselling to be held on August 23, 2006.

The Prospectus clearly spelt out that the candidates would be informed by post, and in case the call letter is not received in time due to postal delay for which the College or the University shall not be responsible. They are advised to see the Web Site of the University.

The call letter in question was handed over to the post man since August 15 and 16, 2006 were holidays for its dispatch on August 17, 2006. The delay in receipt of the call letter was due to postal delay.

Out of 22 candidates for the second counseling, 8 were from the State of Manipur, out of which except the Petitioner, all appeared, who were also admitted, even though they were below the Petitioner.

The University could not have prolonged the admission at its sweet will as September 30, 2006 was fixed by the Apex Court as deadline.

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A seat in the North-Eastern Category has fallen vacant as one Miss Karnalika Singh, who was admitted in that category on August 23, 2006, took admission in the Sikkim Category by surrendering the seat of North-Eastern Category.

**[6]** The Petitioner's assertion in her Rejoinder that she resides in a very remote area at the District of Imphal, which is not having facility of Internet has not been denied. Her claim set forth in the Rejoinder that she can be admitted in the existing lone vacancy has also not been denied.

**[7]** Heard Mr. Y.N. Singh, learned counsel for the Petitioner and Mr. A.K. Upadhyaya, learned Senior Advocate appearing on behalf of the Respondents.

**[8]** Undisputedly a vacancy exists in the North-Eastern Category. Mr. Upadhyaya, however, states that the Respondents will follow the direction of this Court, if made, as some others may file another Writ Petition.

**[9]** The only question which requires adjudication by this Court considering the fundamental right of the Petitioner of having education implicit in Article

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21 of the Constitution of India for the fault of the Respondents she should be allowed to suffer?

**[10]** The Apex Court of the Country has already declared that the right to education is a fundamental right of every citizen, which is implicit in the right to life guaranteed under Article 21 of the Constitution of India which is one of the most important right in the life of an individual. (See Chameli Singh v. State of U.P., AIR 1996 SC 1051; Mohini Jain v. State of Karnataka, AIR 1992 SC 1858; J.P. Unni Krishnan v. State of Andhra Pradesh, AIR 1993 SC 2178)

**[11]** It is not the case of the Respondents that the applicants were also asked to provide their E-mail Address. The Petitioner has disclosed her Telephone Number on her application. Ours is a poor country and Internet facilities are only available to a handful. Admittedly the letter was dispatched on August 18, 2006, two days after its signing, which was received two days after 23.8.2006, the date fixed for the personal appearance of the Petitioner for her counselling. The Peon/Postal Department was at best the agent of the Respondents and not of the Petitioner. The Petitioner was never informed of this day earlier. We are of, thus, a firm view that the

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Respondents cannot penalize the Petitioner for their failure in not giving a reasonable time for her appearance on the date fixed.

**[12]** There will be also failure of justice, if we refuse to exercise our jurisdiction.

**[13]** Thus, we allow this Writ Petition and direct the Respondents to admit the Petitioner at the earliest since September 30, 2006 is the deadline fixed by the Apex Court.

**[14]** Let a copy of this Order be handed over to Mr. A.K. Upadhyaya, Senior Advocate through his learned junior Miss Manita Pradhan, Advocate for a follow up action by the Respondents.

(Binod Kumar Roy)
Chief Justice

(A.P. Subba)
Judge

A.F.R.

14/9/06

A Copy of Order forwarded to Sh. Upadhyaya through his Junior Ms. Manita Pradhan on 15/9/06.

15/9/06